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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/561,897

02/12/2007

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1512.2.160

3092

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EXAMINER

DONLON, RYAN D

ART UNIT

PAPER NUMBER

3695

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,897	<b>Applicant(s)</b> SHEFFIELD ET AL.	
	<b>Examiner</b> RYAN D. DONLON	<b>Art Unit</b> 3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 9, 25 and 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. As per claim 9, it is unclear whether the phrase "and/or" is "and" or "or". For the purposes of compact prosecution, the Examiner will interpret this to mean --or--.
6. As per claim 25, it is unclear what is intended by the phrase "a group of lowest unique bids". It appears as though Applicant has claimed a group consisting of only a single item, the lowest unique bid, which is contrary to what the term "group" implies. For the purposes of compact prosecution, the Examiner will interpret this to mean --the lowest unique bid from a group of bids--.
7. As per claim 28 it is not clear what is intended by the phrase "a computer program product comprising a computer readable medium". It appears as though a computer program (an abstract idea) somehow comprises a tangible material.
8. Appropriate corrections are required.

***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

10. Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. As an initial matter, the United States Constitution under Art. I, Section, cl. 8 gave Congress the power to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. § 101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof". Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". Further, despite the express language of § 101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by § 101. These exceptions include "laws of nature", "natural phenomena" and "abstract ideas". See *Diamond v. Diehr*, 450, USPQ 175, 185,209 USPQ (BNA) 1, 7 (1981). However, the courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a

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"useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

11. The broadest reasonable interpretation of claims 1-28 are directed to merely software (abstract ideas). However, there are no actual steps of performing the intended method to produce a useful, concrete and tangible result. Accordingly, the claims do not produce any output being considered as a concrete, useful and tangible result. Thus claims 1-10 are rejected as being non-statutory.

12. **Examiner Notes:** When amending the claims to over come these rejections, the Examiner recommends amending the body of them claim(s), rather than simply amending the preamble(s) (see *Ex parte Langemyr* Appeal No. 2008-1495 (May 28, 2008)).

13. Claims 27-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

14. 35 U.S.C. 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, *or* composition of matter, *or* any new and useful improvement thereof" (emphasis added). The applicants claims mentioned above are intended to embrace or overlap *two* different statutory classes of invention as set forth in 35 U.S.C. 101. The claims begin by discussing a computer program, but subsequently the claims then deal with the specifics of a method. "A claim of this type is precluded by the express language of 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", *Ex parte Lyell* (17 USPQ2d 1548).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1-10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herzog et al. 2004/0059663 A1 (hereinafter Herzog) in view of Mendiola et al 2004/0058694 A1 (hereinafter Mendiola).

17. As per **claim 1**:

Herzog discloses a method for auctioning a lot, comprising:  
receiving a plurality of messages from a plurality of bidders for the lot, each message including a bid for the lot (see at least paragraph [0032]);  
sending a bid acceptance messages message to each of said bidders notifying the bidder of the status of the bidder's bid (see at least paragraph [0035]);  
charging each bidder for sending the bid acceptance message (see at least paragraph [0034] wherein Herzog discloses charging the bidder, "for sending the bid acceptance message" is considered intended use since the method would be performed the same way, regardless of what the charge is intended for);

18. Herzog does not disclose: sending a bid acceptance messages message by SMS;

19. However Mendiola discloses sending a bid acceptance messages message by SMS (see at least paragraph [0188])

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20. It would have been obvious to one of ordinary skill in the art to include in the method of auctioning a lot of Herzog, the method of sending acceptance messages as taught by Mendiola because this would have provided convenient communication of messages (see at least Mendiola paragraph [0022]). Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

21. Herzog and Mendiola together do not disclose determining a bidder associated with a lowest unique bid for the lot.

22. However Herzog discloses determining a bidder associated with the highest unique bid for the lot (see at least paragraph [0011]) and further discloses accepting "some unique... offer somehow correlated to a price of the service or product being offered".

23. Further the Applicant discloses the well known method of auctioning a service or product wherein the lowest bid is accepted (see at least Applicant's specification page 1 lines 17-20)

24. Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is in the substitution of the reverse auction, disclosed as old and well known by the Applicant, for the ascending auction of the primary reference. Thus, the simple

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substitution of one known element for another producing a predictable result renders the limitation obvious.

25. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Herzog, Mendiola and the old and well known method of conducting an reverse auction to obtain the invention as specified in claim 1.

26. As per **claim 2**:

Mendiola discloses a method of claim 1, wherein the plurality of messages is received via SMS messaging (see at least paragraph [0181]-[0184]).

27. As per **claim 3**:

Herzog and Mendiola do not disclose a method of claim 1, wherein charging each bidder includes sending the bid acceptance message by a reverse billed SMS message.

28. However Official Notice is taken that it was well known in the art at the time of the invention to reverse bill SMS messages. For example, it was well known for businesses to send reverse billed SMS messages for paying for images, ring tones, vending machines, or a variety of other products.

29. It would have been obvious to one of ordinary skill in the art to include in the method of auctioning of Herzog and Mendiola (see the rejection of claim 1), the well known method of reverse billing using SMS for paying for services because the claimed invention would provide a convenient method of charging customers. Further the



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claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

30. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Herzog, Mendiola and the well known method of reverse billing SMS messages to obtain the invention as specified in claim 3.

31. As per **claim 4:**

Herzog discloses a method of claim 1 and further comprising limiting each bidder up to a maximum number of bids per auction (see at least paragraph [0037]).

32. As per **claim 5:**

Herzog discloses a method as claimed in claim 1, wherein the bid acceptance message notifies the bidder that either their bid is the current lowest unique bid, their bid is not unique (see at least claim 5) or their bid is unique, but is not currently the lowest unique bid (for the purposes of examination, this claim is interpreted in the alternative).

33. As per **claim 6:**

Mendiola discloses a method as claimed in claim 1 and further including:

sending a notification message to a bidder when the status of the bidder's bid

changes (see at least paragraph [0181]).

34. As per **claims 7 and 8:**

Herzog does not disclose a method as claimed in claim 6, wherein the status of the bidder's bid changes to not currently being the lowest unique bid and the notification message notifies the bidder that their bid is no longer the lowest unique

35. Herzog does disclose notifying a bidder that their offer was not unique (see at least claim 6). Further Herzog discloses a closest unique bid auction (see at least paragraph [0040])

36. Further Mendiola discloses sending a notification message when the status of the bidder's bid changes and the bidder is alerted of the change (see at least paragraph [0181])

37. It would have been obvious to one of ordinary skill in the art to include in the notifying a user that their bid is not unique of Herzog in a closest unique bid auction, the method of sending a notification message with the status of the bidders bid has changed as taught by Mendiola because this would have added a convenient communication of messages (see at least Mendiola paragraph [0022]) between users or clients and a host server.

38. Mendiola does not disclose and the price of the bidder's bid; however Mendiola discloses sending the current highest price with this message.

39. It would have been obvious to one of ordinary skill in the art to substitute the current highest bid, with bidder's price in a unique price auction because this would

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have provided the bidder with a guide to making a decision about their next bid, just as the current highest bid does from the Mendiola reference.

40. Further the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

41. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings Herzog and Mendiola to obtain the invention as specified in claims 7 and 8.

42. As per **claim 9**:

Mendiola discloses a method as claimed in claim 1, wherein the received bidder messages are passed at least partially over the internet before processing the bid --or-- the bid acceptance messages are passed at least partially over the internet before being sent by SMS (see at least paragraphs [0178]-[0182]).

43. As per **claim 10**:

The method as claimed in claim 1, wherein the communication with the bidders is handled by software in real time (see at least paragraphs [0015] and [0148]).

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44. Claims 11-13, 15-16, 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mendiola in view of Herzog and further in view of M2 Presswire "Link77: Link77 introduces reverse charge SMS billing service for ringtones and logos." (Hereinafter Link77) published December 18, 2001.

45. As per **claim 11**:

Mendiola discloses a computer implemented method for facilitating bidder participation in an auction, comprising:

receiving a bid data item over a computer network, the bid data item being derived from a bid message sent by a bidder (see at least paragraph [0184]);

determining a destination telecommunications device phone number for the acceptance message (see at least paragraph [0188]);

and sending the acceptance message, at least partially over the computer network, for transmission to the bidder at the destination telecommunications device by SMS message (see at least paragraph [0188]).

46. Mendiola further discloses determining whether the bid data item is the leading (a current lowest unique) bid for an auction; if it is determined that the bid data item is the leading bid, then marshalling a bid acceptance message indicating that the bid is the leading bid, and if it is determined that the bid data item is not the leading bid, then marshalling a bid acceptance message indicating that the bid is not the leading bid (see at least paragraph [0188]);

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47. Mendiola does not disclose a highest unique bid auction or a reverse billed SMS message.

48. However Herzog discloses a highest unique bid auction. Further the applicant discloses the old and well known reverse auction (where the lowest bid wins) (see applicant's specification page 1 lines 17-20).

49. Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is in the substitution of the reverse auction, disclosed as old and well known by the Applicant, for the ascending auction of the primary reference. Thus, the simple substitution of one known element for another producing a predictable result renders the limitation obvious.

50. Mendiola and Herzog do not disclose a reverse billed SMS message. However Herzog discloses billing the bidder (see at least paragraph [0034]), Further Link77 discloses reverse billing a user for a service (see at least Link77 abstract)

51. Therefore it would have been obvious to It would have been obvious to one of ordinary skill in the art to include in the method of interacting with bidders using SMS of Mendiola, the methods of billing bidders and selecting a winner as disclosed by Herzog and the method of reverse billing using SMS as taught by Link77 because this would have added a convenient method of billing and paid for the convenience of SMS messages. Further, the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is

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did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

52. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 11.

53. As per **claim 12**:

Mendiola discloses a method as claimed in claim 11 and further comprising:  
receiving an auction identifier data item ("UIN") with the bid data item, the auction identifier data item being derived from the same bid message sent by a bidder as the bid data item;

and using the auction identifier data item to determine an auction corresponding to the auction identifier data item (see at least paragraph [0185]-[0187]).

54. As per **claim 13**:

Mendiola discloses a method as claimed in claim 11 and further comprising:  
validating the bid data item to determine whether the bid is an acceptable bid for the auction (see at least paragraph [0032]).

55. As per **claim 15**:

Mendiola does not disclose a method of claim 11, and further comprising:

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checking whether the bid data item is in the correct bid units;

and if not, then converting the bid data item into the correct bid units.

56. However Official Notice is taken that it was well known in the art at the time of the invention to convert currencies when receiving a bid. For example when receiving a bid in an international auction, it was well known to convert the currencies to a base currency (such as dollars), using a going exchange rate, in order to compare the bids for determining a winner.

57. It would have been obvious to one of ordinary skill in the art to include in the method of receiving an bid using SMS messages of Mendiola, Herzog and Link77 (see rejection of claim 11 above), the well known method of converting currencies of bids because this would have allowed for international auctions .Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

58. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 11, and the well known method of converting currencies to obtain the invention as specified in claim 15.

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59. As per **claim 16**:

Mendiola does not disclose a method of claim 11 and further comprising generating a unique identifier for each bid data item received.

60. However Official Notice is taken that generating a unique ID (such as a highly precise timestamp) for each received bid is old and well known in the art at the time of the invention. For example, many electronic auctions will timestamp each incoming bid to determine the winning bid in case of a tie, or for auditing purposes on stock exchanges.

61. It would have been obvious to one of ordinary skill in the art to include in the method of receiving bids of Mendiola, Herzog and Link77 (see rejection of claim 11 above), the well known method of generating a unique ID for each incoming bid because this would have allowed for proper auditing of the auction service. Further, because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

62. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 11, and the well known method of generating a unique ID for each incoming bid to obtain the invention as specified in claim 16.



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63. As per **claim 18**:

Mendiola does not disclose the method of claim 11, wherein determining whether the bid data item is the current lowest unique bid for the auction comprises:

carrying out a look up of a database of stored bid data items for the auction;

determining whether the number of stored bids at the bid data item value is zero;

if the number of stored bids at the bid data item value is zero then carrying out a look up of the database of stored bid data items for the auction to determine the current lowest unique bid value;

and determining whether the bid data item value is less than the current lowest unique bid value.

64. However as addressed in claim 11, Herzog discloses a highest unique bid auction, and in view of the applicant's admission of a lowest bid auction (a reverse auction), a lowest unique bid auction would have been obvious to one skilled in the art at the time of the invention (see the rejection of claim 11 above). Further Herzog discloses an method of determining the highest unique bid (see at least paragraphs [0013] and [0027]) comprising:

65. carrying out a look up of a database of stored bid data items for the auction (see at least paragraph [0027]);

determining whether the number of stored bids at the bid data item value is zero (determines uniqueness of a bid; see at least paragraph [0027]);

if the number of stored bids at the bid data item value is zero then carrying out a look up of the database of stored bid data items for the auction to determine the current

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lowest unique bid value and determining whether the bid data item value is less than the current lowest unique bid value (determining if there are any unique bids higher (analogous to lower) price, thus finding a highest unique price; see at least paragraph [0027]).

Therefore it would have been obvious to It would have been obvious to one of ordinary skill in the art to include in the method of interacting with bidders using SMS of Mendiola, the methods of billing bidders and selecting a winner as disclosed by Herzog and the method of reverse billing using SMS as taught by Link77 for at least the reasons put for in the rejection of claim 11 above.

66. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 18.

67. As per **claim 19**:

Mendiola discloses a method as claimed in claim 11, wherein marshalling the bid acceptance message includes:

selecting a message template for the acceptance message (see at least paragraph [0188]);

looking up stored variable data items (user's phone number);

and populating the message template with the variable data items (see at least

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paragraph [0188]).

68. As per **claim 20**:

Mendiola discloses a method as claimed in claim 11, wherein sending the acceptance message includes loading a message object with message data (the message) and bidder data (bidder's phone number) (see at least paragraph [0188]).

69. As per **claim 21**:

Mendiola discloses a method of claim 20, wherein sending the acceptance message further includes placing the message object in a message queue table (see at least paragraph [0188] where the message queue table is silently disclosed. As the messages are taught to be sent, it must be that the messages are sent through the "store and forward" network of the SMSC, see also paragraph [0016]).

70. As per **claim 22**:

Mendiola discloses a method of claim 21, wherein sending the acceptance message further includes:

polling the message queue table to identify new messages;

passing new messages to an aggregator service for transmission as an SMS message to the bidder (see at least paragraph [0188] where the message queue table is silently disclosed. As the messages are taught to be sent (transmission), it must be that the messages are sent through the "store and forward" (store new messages and

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forward them on) network (aggregator) of the SMSC, see also paragraph [0016]).

71. As per **claim 23 and 24:**

Mendiola does not disclose a method of claim 22, and further including receiving a receipt ID from the aggregator for the message passed to the aggregator and storing the receipt ID when received and determining whether the receipt ID has been received and updating a status associated with the sent message.

72. However Official Notice is taken that it was well known in the art to receive a delivery confirmation (sometimes known as a delivery report) (a receipt ID) from an SMS server (aggregator) and store the ID when received and updating the delivered status associated with the sent message. For example, when an SMS is delivered, a mobile service provider may receive a delivery confirmation (receipt ID) from the mobile phone for the SMS message. For billing and auditing purposes this information is stored by the mobile phone service provider, because the fees associated with the SMS message are only charged if the message is delivered. Further the service provider continues to attempt to deliver the SMS message until the SMS message has been delivered and the delivery confirmation has been received (updating a status) or until the provider determines the message is undeliverable.

73. It would have been obvious to one of ordinary skill in the art to include in the method of accepting bids for a live auction using SMS phone number of Mendiola, Herzog and Link77 (see rejection of claim 11 above), the well known method of receiving, storing and determining using delivery confirmations because the claimed

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invention is merely a combination of *old and well known* elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

74. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link<sup>77</sup> to obtain the invention as specified in claim 23 and 24.

75. As per **claim 25**:

76. Mendiola does not disclose determining the lowest bid for --the lowest unique bid from a group of bids--for which the bid acceptance message has been received. However Mendiola does disclose determining the winning (see at least paragraph [0178]) from a group of bids for which the bid acceptance message has been received (see at least paragraph [0188]).

77. Mendiola does not disclose identifying the winning bidder as the lowest unique bid. However Herzog in view of the Applicant's admission renders the method of identifying the lowest unique bid as obvious (see the rejection of claim 11).

78. It would have been obvious to one of ordinary skill in the art to include in the method of selecting a winning bid of Mendiola, the method of selecting the highest winning bid as taught by Herzog and the well known method of conducting a reverse auction for at least the reasons recited in the rejection of claim 11.

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79. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 to obtain the invention as specified in claim 25.

80. As per **claim 26**:

A computer system for facilitating bidder participation in an auction, comprising:  
at least a first data processing device and a memory in communication with the data processing device, the memory storing instructions for configuring the processor to:

receive a bid data item over a computer network to which the computer system is connected, the bid data item being derived from a bid message sent by a bidder;

determine whether the bid data item is the current lowest unique bid for an auction;

if it is determined that the bid data item is the current lowest unique bid, then to generate a bid acceptance message indicating that the bid is the current lowest unique bid, and if it is determined that the bid data item is not the current lowest unique bid, then to generate a bid acceptance message indicating that the bid is not the current lowest unique bid;

determine a destination telecommunications device phone number for the acceptance message;

and send the acceptance message, at least partially over the computer network, for transmission to the bidder at the destination telecommunications device by a reverse

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billed SMS message (this claim introduces no substantial limitation over that of claim 11 and is therefore rejected under a similar rationale).

81. As per **claim 27**:

Computer program code executable by a data processing device to provide the method of a claim 11 (this claim introduces no substantial limitation over that of claim 11 and is therefore rejected under a similar rationale).

82. As per **claim 28**:

A computer program product comprising a computer readable medium storing the computer program code of claim 27 (this claim introduces no substantial limitation over that of claim 11 and is therefore rejected under a similar rationale).

83. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mendiola in view of Herzog and further in view of Link77 as applied to claim 11 above, and further in view of Abeshouse et al., EP 1220126 A2 (hereinafter Abeshouse), published March 7, 2002.

84. As per **claim 14**:

Mendiola discloses a method as claimed in claim 11 and further comprising:  
polling a message store to identify new messages (see at least paragraph [0185]-[0188]);

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85. using a mobile phone telephone number data item to determine whether the bid is associated with an auction and if it is then loading message data into a message object (the response to the user) (see at least paragraph [0186]-[0188] wherein it is shown the mobile phone telephone number data item is used by the SMSC server to receive the SMS message, then using the UIN from the recipient the message is associated with the auction); and passing the message object to an auction application (see at least paragraph [0188] wherein the message object is passed to the auction application's SMS sending system).

86. Mendiola, Herzog and Link77 do not disclose if the bid is not associated with a live (live is silently disclosed since Mendiola discloses an auction duration (see at least paragraph [0165])) session for the auction, then using an auction identifier data item to determine whether the bid is for an auction and if it is then loading message data into a message object.

87. Abeshouse discloses if the bid is not associated with a live session for the auction, then using an auction identifier data item to determine whether the bid is for an auction and if it is then loading message data into a message object (see at least claim 9, paragraphs [0013]-[0020] wherein it is disclosed if a bid is received after the close of an auction, the system checks to see if the bid is for an auction which has closed accepting the bid (loading message data into a message object)).

88. It would have been obvious to one of ordinary skill in the art to include in the method of accepting bids for a live auction using SMS phone number of Mendiola, Herzog and Link77 (see rejection of claim 11 above), the method of accepting bids as



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taught by Abeshouse because this would have allowed for determining whether a submitted bid should be accepted when it is sent from a participant processor prior to closing time as perceived at the participant processor, but after the auction processor perceived closing time (see at least paragraph [0019]). Further because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

89. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 11, and to further include the teachings of Abeshouse to obtain the invention as specified in claim 14.

90. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mendiola in view of Herzog and further in view of Link77 as applied to claim 13 above, and further in view of Hong Kong's Tender, published June 2000.

91. As per **claim 17**:

Mendiola discloses a method of claim 13, wherein validating the bid data item includes at least one operation selected from :

determining whether an auction is active (see at least paragraph [0165]);

and determining whether the bid data item falls within a range of acceptable bid values (see at least paragraph [0171]).

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92. Mendiola and Herzog do not disclose determining whether the bid exceeds a maximum number of bids for the bidder (see at least paragraph [0037] wherein a maximum number of bids );

93. Hong Kong Tender discloses determining whether the bid exceeds a maximum number of bids for the bidder (see at least page 2 “participation rules”);

94. It would have been obvious to one of ordinary skill in the art to include in the method of receiving bids of Mendiola, Herzog and Link77 (see rejection of claim 11 above), the method of determining whether the bid exceeds a maximum number of bids for the bidder as taught by Hong Kong's Tender because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as is did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

95. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Mendiola, Herzog and Link77 for at least the reasons disclosed in claim 11, and Hong Kong's Tender to obtain the invention as specified in claim 17.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RYAN D. DONLON whose telephone number is (571)270-3602. The examiner can normally be reached on Monday through Friday 7:30am to 5:00pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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November 7, 2008